Pengarah Jabatan Pengangkutan Negeri Selangor & Ors v Sin Yoong Ming

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-12–06 OF 2013(B)
RAUS SHARIF PCA, ABDULL HAMID EMBONG, HASAN LAH, ZALEHA ZAHARI AND RAMLY ALI FCJJ
20 NOVEMBER 2014

Road Traffic — Registry of vehicle — Rectification of records — Purchase of used motorcar — Respondent purchased and applied for Selangor number plate — Application approved and transfer of ownership of motorcar completed — No inspection done on motorcar before registration of transfer of ownership — Motorcar seized by police on suspicion that it was stolen motorcar — Whether first appellant had duty to ensure that particulars in registration certificate were accurate, reliable, well-kept, valid and protected — Whether ss 10 and 12 of the Road Transport Act 1987 applied to transfer of ownership of vehicles

The appellants were the defendants in the High Court and the respondent was the plaintiff. In the High Court, Tenaga Insurance Bhd, an insurance company, which provided insurance coverage for the motorcar was also joined as the fourth defendant. Some time in March 1999, the respondent intended to buy a used Mercedes Benz motorcar and was given a transfer form executed by the registered owner, Riwanis Modal Sdn Bhd, and the original motor vehicle registration form issued by the Road Transport Department ('the department'). The respondent had checked with the department's records and found the particulars relating to the motorcar to be correct and there were no impediments of the transfer of the motorcar to him. The respondent proceeded with the purchase and applied to the first appellant for a Selangor number plate. This was approved and the number given was BFN 1888. The transfer of ownership of the motorcar to the respondent was completed. No inspection was done on the motorcar by the department before the registration of the transfer of the ownership of the motorcar to the respondent. On 27 April 1999 the motorcar was seized by the police on suspicion that the motorcar was a stolen motorcar. Investigations by way of a chemical process carried out by the Chemistry Department revealed that the engine and chassis numbers of the motorcar were tampered with and the chassis had been rejoined and welded. The respondent filed a suit against the three appellants and Tenaga Insurance Bhd for damages. After a full trial, the High Court, inter alia, made the findings that the first appellant had a duty to ensure that the particulars in the registration certificate of the motorcar were accurate, reliable, well-kept, valid and protected; the second and third appellants were vicariously liable; and the first appellant failed to perform his statutory duty imposed by ss 10 and 12 of

the Road Transport Act ('RTA') before registering the respondent as the new owner of the motorcar by not inspecting the engine and chassis numbers of the motorcar, ignoring and did not record the information given by Tenaga Insurance Bhd that the motorcar was stolen in the department's information system. The Court of Appeal affirmed the decision of the High Court but on different grounds. The Court of Appeal held that s 13 of the RTA deals with change of possession or ownership of vehicles and this provision did not require the vehicle to be inspected. The Court of Appeal held that ss 10 and 12 of the RTA did not apply to transfer of ownership of vehicles. Hence, the present appeal.

Held, dismissing the appeal with costs:

(1) The wordings of ss 10 and 12 of the RTA were very clear and unambiguous that they only deal with the registration of motor vehicles. They do not deal with the change of possession of motor vehicles. Only s 13 of the RTA would apply to change of possession of a motor vehicle as what happened in the instant case (see para 28).

(2) Under s 13(1) of the RTA, the existing registered owner, on any change of possession of a motor, would be required to forward to the director a statement in the prescribed form within seven days after such change of possession. The new owner was also required to forward to the director a statement in the prescribed form together with the registration certification and the prescribed fee within seven days. After they complied with the requirements the new owner was entitled to be registered as the new owner of the motor vehicle. Unlike s 12 of the RTA, there was no requirement under s 13 for the director to inspect the motor vehicle before the registration of a new owner of the motor vehicle. The first appellant did not breach his duty under s 13 when he registered the respondent as the new registered owner of the motorcar without first inspecting the motorcar (see paras 29 & 30).

(3) The evidence was adduced to show that the first appellant was informed by Tenaga Insurance Bhd that in December 1996 the motorcar was stolen. Unfortunately, the first appellant did not record that information in the register kept by the department. The explanation given was that it was not the practice of the department to record that information in its register. The motorcar was registered in the respondent's name on 1 April 1999, which was 3 1/2 years after the first appellant was informed that the motorcar was stolen (see para 34).

(4) The registers maintained by the department pursuant to s 8 of the RTA must contain accurate particulars of all vehicles registered by the department. This is because the prospective purchasers of the vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions (see para 36).

[Bahasa Malaysia summary

Perayu-perayu adalah defendan-defendan di Mahkamah Tinggi dan responden adalah plaintif. Di Mahkamah Tinggi, Tenaga Insurance Bhd, syarikat insurans, yang memberikan perlindungan insurans untuk motokar juga turut serta sebagai defendan keempat. Dalam bulan Mac 1999, responden berniat untuk membeli motokar Mercedes Benz dan diberikan borang pemindahan yang dilaksanakan oleh pemilik berdaftar, Riwanis Modal Sdn Bhd, dan borang pendaftaran asal kenderaan yang dikeluarkan oleh Jabatan Pengangkutan Jalan ('jabatan'). Responden telah memeriksa dengan rekod jabatan dan mendapati butir-butir berkaitan motokar adalah betul dan tidak terdapat halangan terhadap pemindahan motokar kepadanya. Responden meneruskan dengan pembelian dan memohon kepada perayu pertama untuk plat nombor Negeri Selangor. Ini diluluskan dan nombor yang diberikan adalah BFN 1888. Pemindahan hakmilik motokar kepada responden telah lengkap. Tiada pemeriksaan dilakukan ke atas motokar oleh jabatan sebelum pendaftaran pemindahan hakmilik motokar kepada responden. Pada 27 April 1999 motokar dirampas oleh oleh polis kerana disyaki bahawa motokar tersebut adalah motokar curi. Siasatan melalui proses kimia dijalankan oleh Jabatan Kimia menunjukkan bahawa enjin dan nombor casis motokar diusik dan casis telah disambungkan semula dan dikimpal. Responden memfailkan tindakan terhadap ketiga-tiga perayu dan Tenaga Insurance Bhd untuk ganti rugi. Selepas perbicaraan penuh, Mahkamah Tinggi, antara lain, membuat dapatan bahawa perayu pertama mempunyai tugas untuk memastikan bahawa butir-butir dalam sijil pendaftaran motokar adalah tepat, boleh dipercayai, dijaga, sah dan dilindungi; perayu-perayu kedua dan ketiga adalah bertanggungjawab secara vikarius; dan perayu pertama gagal untuk menjalankan tugas statutorinya yang dikenakan oleh ss 10 dan 12 Akta Pengangkutan Jalan 1987 ('APJ') sebelum mendaftarkan responden sebagai pemilik baru motokar dengan tidak memeriksa nombor enjin dan casis motokar, tidak menghiraukan dan tidak merekodkan maklumat yang diberikan oleh Tenaga Insurance Bhd bahawa motokar dicuri di dalam sistem maklumat jabatan. Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi tetapi atas alasan berbeza. Mahkamah Rayuan memutuskan bahawa s 13 APJ menangani pertukaran hakmilik atau pemilikan kenderaan dan peruntukan ini tidak memerlukan kenderaan diperiksa. Mahkamah Rayuan memutuskan bahawa ss 10 dan 12 APJ tidak diguna pakai kepada pemindahan hakmilik kenderaan. Maka, rayuan ini.

Diputuskan, menolak rayuan dengan kos:

(1) Perkataan-perkataan ss 10 dan 12 APJ adalah jelas dan terang bahawa ia hanya menangani pendaftaran kenderaan. Ia tidak menangani pertukaran hakmilik kenderaan. Hanya s 13 APJ akan diguna pakai untuk menukar hakmilik kenderaan seperti apa yang terjadi dalam kes ini (lihat perenggan 28).

(2) Di bawah s 13(1) APJ, pemilik berdaftar sedia ada, atas apa-apa pertukaran hakmilik motor, diperlukan untuk memberikan pernyataan kepada pengarah dalam borang yang ditetapkan dalam masa tujuh hari selepas pertukaran hakmilik sedemikian. Pemilik baru juga dikehendaki untuk memberikan pernyataan kepada pengarah dalam borang yang ditetapkan bersama dengan sijil pendaftaran dan fi yang ditetapkan dalam masa tujuh hari. Selepas mereka mematuhi keperluan-keperluan pemilik baru berhak untuk didaftarkan sebagai pemilik baru kenderaan. Tidak seperti s 12 APJ, tidak ada keperluan di bawah s 13 untuk pengarah memeriksa kenderaan sebelum pendaftaran pemilik baru kenderaan. Perayu pertama tidak memungkiri kewajipan di bawah s 13 apabila dia mendaftarkan responden sebagai pemilik berdaftar baru motokar tanpa memeriksa dahulu motokar tersebut (lihat perenggan 29 & 30).

(3) Keterangan diberikan untuk menunjukkan bahawa perayu pertama telah dimaklumkan oleh Tenaga Insurance Bhd bahawa dalam bulan Disember 1996 motokar itu telah dicuri. Malangnya, perayu pertama tidak merekodkan maklumat itu di dalam daftar yang disimpan oleh jabatan. Penjelasan yang diberikan adalah bahawa ia bukan amalan jabatan untuk merekod maklumat tersebut dalam daftarnya. Motokar didaftar atas nama responden pada 1 April 1999, yang mana adalah 3 1/2 tahun selepas perayu pertama dimaklumkan bahawa motokar dicuri (lihat perenggan).

(4) Daftar diselenggara oleh jabatan menurut s 8 APJ mesti mengandungi butir-butir yang tepat kesemua kenderaan yang didaftarkan oleh jabatan. Ini adalah kerana bakal pembeli kenderaan dan mereka yang terlibat dalam perniagaan motor bergantung ke atas maklumat sedemikian untuk menjalankan transaksi persendirian dan komersial (lihat perenggan 36).]

Notes

For a case on rectification of records, see 11 *Mallal's Digest* (4th Ed, 2013 Reissue) para 597.

Cases referred to

Datuk M Kayveas v See Hong Chen & Sons Sdn Bhd & Ors [2014] 4 MLJ 64; [2013] 5 CLJ 949, FC (refd)

E v K [1995] 2 NZLR 239 (refd)

Groves v Wimborne [1889] 2 QB 402, CA (refd)

Kerajaan Malaysia & Ors v Lay Kee Tee & Ors [2009] 1 MLJ 1, FC (refd)

Ketua Polis Ibu Pejabat Kontinjen Polis Seremban Negeri Sembilan & Anor v Manoharan a/l Dorasamy [2004] 3 MLJ 565, FC (folld)

Pacific Forest Industries Sdn Bhd & Anor v Lin Wen Chih & Anor [2009] 6 MLJ 293, FC (refd)

A *Pendaftar dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v KS South Motor Sdn Bhd* [2000] 2 MLJ 540; [2000] 2 CLJ 573, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 67, 68
B Road Transport Act 1987 ss 8, 10, 12, 12(1), 13 , 13(1), 59

Appeal from: Civil Appeal No B-01–815 of 2010 (Court of Appeal, Putrajaya)

Azizan bin Md Arshad (Mariam Hasanah bt Othman and Shaiful Nizam bin
C *Shahrin with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.*
Mohd Firuz bin Jaffril (Abdullah Abd Rahman with him) (Firuz, Aidil & Zarina) for the respondent.

D **Hasan Lah FCJ (delivering judgment of the court):**

[1] Leave was granted on 21 May 2013 to the appellants to appeal against the decision of the Court of Appeal given on 30 July 2012 on the following
E questions of law (in Malay):

> (1) sama ada kes *Ketua Polis Ibu Pejabat Kontinjen Polis Negeri Sembilan & Anor v Manoharan a/l Dorasamy* [2004] 3 MLJ 565 terpakai kepada kenderaan yang ditukar hakmilik menurut s 13 Akta Pengangkutan Jalan 1987; dan
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> F (Whether the case of *Ketua Polis Ibu Pejabat Kontinjen Polis Negeri Sembilan & Anor v Manoharan a/l Dorasamy* [2004] 3 MLJ 565 applies to vehicles whose registration are transferred pursuant to section 13 of the Road Transport Act 1987);
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> G (2) jika jawapan kepada soalan pertama di atas adalah dalam bentuk positif, sama ada gantirugi diperuntukkan di bawah Akta Pengangkutan Jalan 1987 untuk keingkaran kewajipan statutori di bawah s.13 Akta Pengangkutan Jalan 1987 tersebut.
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> (If the answer to question (1) is in the affirmative, whether damages can be
> H claimed for breach of statutory duty under s.13 of the Road Transport Act 1987).

[2] On 15 April 2014 this court granted leave to the appellants to pose the following additional questions of law:

I (3) sama ada Mahkamah Rayuan boleh memutuskan di atas peruntukan undang-undang bertulis yang tidak diplidkan di dalam mana-mana kertas kausa atau disokong di dalam hujahan pihak-pihak semasa di peringkat Mahkamah Tinggi dan peringkat Mahkamah Rayuan sendiri; dan

(Whether it is open to the Court of Appeal to decide the appeal on a provision of written law which was not pleaded in any cause papers or canvassed in the submissions of the parties in the High Court and the Court of Appeal itself);

(4) sama ada selepas pendaftaran kenderaan bermotor dilakukan, tugas statutori dikenakan terhadap Pengarah Jabatan Pengangkutan Jalan berdasarkan kepada Seksyen 59 atau mana-mana peruntukan di dalam Akta Pengangkutan Jalan 1987 untuk menjalankan pemeriksaan fizikal terhadap kenderaan bermotor tersebut untuk mengelakkan sebarang kerugian di alami oleh seseorang yang telah membeli kenderaan tersebut.

(Whether after the registration of a motor vehicle has been done, a statutory duty is imposed on the Director of Road Transport Department pursuant to Section 59 or any other provision of the Road Transport Act 1987 to carry out a physical inspection of the said motor vehicle so as to avert any losses incurred by a person who has purchased the said vehicle).

[3] The appellants were the defendants in the High Court and the respondent was the plaintiff. In the High Court Tenaga Insurance Bhd, an insurance company, which provided insurance coverage for the motorcar from 8 August 1996 to 7 August 1997 was also joined as the fourth defendant.

[4] The facts of the case are these. Sometime in March 1999, the respondent intended to buy a used Mercedes Benz motorcar bearing registration No NAN 1888. He was given a transfer form executed by the registered owner, Riwanis Modal Sdn Bhd, and the original motor vehicle registration form issued by the Road Transport Department ('department'). The respondent had checked with the department's records and found the particulars relating to the motorcar to be correct and there were no impediments of the transfer of the motorcar to him.

[5] The respondent proceeded with the purchase and applied to the first appellant for a Selangor number plate. This was approved and the number given was BFN 1888.

[6] The transfer of ownership of the motorcar to the respondent was completed on 1 April 1999. From the evidence given by the appellants' witnesses it was clear that no inspection was done on the motorcar by the department before the registration of the transfer of the ownership of the motorcar to the respondent. That was the practice and procedure adopted by the department in 1999. The department would only rely on the documents submitted for the registration.

[7] On 27 April 1999 the motorcar was seized by the police on suspicion that

the motorcar was a stolen motorcar. Investigations by way of a chemical process carried out by the Chemistry Department revealed that the engine and chassis numbers of the motorcar were tampered with and the chassis had been rejoined and welded.

[8] On 9 May 2000 the respondent filed a suit against the three appellants and Tenaga Insurance Bhd for damages. The respondent's pleaded case was that the respondent suffered the losses as a result of the first appellant's negligence in:

(a) failing to keep and maintain an accurate, reliable and well kept registration system of the motor vehicles;

(b) failing to update its registration and information system with the latest information;

(c) failing to maintain an efficient system of registration of motor vehicles; and

(d) failing to provide accurate information relating to the registration of the motor vehicles.

[9] In his defence, the first appellant, inter alia, denied that he was negligent and averred that the registration and the change of ownership of the motorcar was done lawfully and in accordance with the procedure and the provisions of the Road Transport Act 1987 ('Act'). Alternatively, it was averred that the relevant documents were falsified by an unknown person or persons.

FINDINGS OF THE HIGH COURT

[10] After a full trial, the High Court, inter alia, made the following findings on liability:

(a) the first appellant had a duty to ensure that the particulars in the registration certificate of the motorcar were accurate, reliable, well kept, valid and protected;

(b) the second and third appellants were vicariously liable; and

(c) the first appellant failed to perform his statutory duty imposed by ss 10 and 12 of the Act before registering the respondent as the new owner of the motorcar by not inspecting the engine and chassis numbers of the motorcar, ignoring and did not record the information given by Tenaga Insurance Bhd that the motorcar was stolen in the department's information system.

[11] It is to be noted that in finding that the first appellant had breached his statutory duty, the High Court relied on the decision of this court in *Ketua Polis*

Ibu Pejabat Kontinien Polis Seremban Negeri Sembilan & Anor v Manoharan a/l Dorasamy [2004] 3 MLJ 565 ('*Manoharan*'s case').

[12] Having found the three appellants liable, the High Court then made the following orders:

(a) that the appellants to pay the respondent RM142,858.40;

(b) interest at 8%pa on the amount awarded from the date of judgment to the date of full satisfaction of the amount; and

(c) general damages to be assessed by the senior assistant registrar.

FINDINGS OF THE COURT OF APPEAL

[13] The Court of Appeal affirmed the decision of the High Court but on different grounds. The Court of Appeal held that s 13 of the Act deals with change of possession or ownership of vehicles and this provision does not require the vehicle to be inspected. The Court of Appeal, despite a clear decision by this court in *Manoharan*'s case, held that ss 10 and 12 of the Act do not apply to transfer of ownership of vehicles.

[14] Having ruled that ss 10 and 12 of the Act do not apply to transfer of ownership of vehicles the Court of Appeal however went on to hold that by virtue of s 59 of the Act there is a duty imposed on the first appellant to inspect vehicles even after their registration. The Court of Appeal then concluded that the first appellant had failed in his duty of care in carrying out his functions under the Act.

SUBMISSIONS OF THE PARTIES

[15] Learned senior federal counsel submitted that the Court of Appeal ought to have allowed the appellants' appeal against the decision of the High Court after holding that ss 10 and 12 of the Act do not apply to a transfer of possession or ownership of vehicles as the respondent's claim was based on those two sections.

[16] It was contended that the Court of Appeal erred in holding that by virtue of s 59 of the Act there was a duty imposed on the first appellant to conduct inspections of motor vehicles even after they have been registered and that in the instant case the first appellant failed in his duty of care in carrying out his function under the Act. Firstly, it was submitted that the issue of duty to inspect vehicles after registration as provided by s 59 of the Act was never pleaded and argued by either party in the High Court and the Court of Appeal. Secondly, it was contended that s 59 of the Act did not impose such a statutory duty on the first appellant. It merely conferred powers to the first appellant to

do certain things. Since s 59 of the Act did not impose a statutory duty on the first appellant, the first appellant did not breach any statutory duty. In support of that learned senior federal counsel cited the following cases:

(a) *E v K* [1995] 2 NZLR 239;

(b) *Groves v Wimborne* [1889] 2 QB 402;

(c) *Kerajaan Malaysia & Ors v Lay Kee Tee & Ors* [2009] 1 MLJ 1.

[17] In response, learned counsel for the respondent submitted that the respondent's case was that the first appellant had breached his statutory duty as spelt out under ss 10 and 12 of the Act when the first appellant failed to carry out physical inspection of the motorcar before registering the change of ownership of the motorcar. It was contended by learned counsel for the respondent that the issue relating to breach of statutory duty under ss 10 and 12 which is also applicable to the change of ownership of the motorcar has been decided in *Manoharan*'s case.

FINDINGS OF THIS COURT

[18] In its judgment the Court of Appeal made the following observations:

> [13] As mentioned above, the Senior Federal Counsel sought to distinguish the application of the latter decision on the ground that section 13 of the Road Transport Act does not require an inspection. We find there is some merit in the submission. There is a distinction, and in our view the High Court erred in paragraph 25 of its grounds of judgment where it held:
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> > 25. Keterangan saksi Defendan Pertama, Defendan Kedua dan Defendan Ketiga mengesahkan bahawa dalam tahun 1999 amalan dan prosedur di JPJ bagi pemindahan pendaftaran nama tuan punya kenderaan kepada seseorang lain ... Pendaftaran pemindahan nama tuanpunya berdasarkan semata-mata kepada pemeriksaan borang-borang dalam dokumen yang perlu dikemukakan. Amalan yang diamalkan oleh pihak JPJ itu bertentangan dengan kewajipan statutori pihak JPJ yang diperuntukkan di bawah s 10 dan s 12 APJ yang mewajibkan untuk memeriksa setiap kenderaan sebelum melakukan apa-apa pendaftaran.
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> [14] We say so for the reason that sections 10 and 12 apply clearly to the registration of a motor vehicle, and not the section 13 registration of transfer of owner or change of possession. Hence, case law on sections 10 and 12 are of no assistance to this case.
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> [19] Consistent with a reasonably competent piece of legislation, the Road Transport Act did not omit provisions to ensure once motor vehicles have been registered, they remain fit for registration, to protect the public. Accordingly, section 59 provides authority to any road transport officer authorised by the Director-General in writing in that behalf to enter and inspect any motor vehicle ...
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> [21] We accept the caution that it is not practical to inspect each and every car on the road on regular basis or to inspect each and every registered motor vehicle being transferred. But, it was not the pleaded case that the Appellants do conduct random

inspections. Hence, the car NAN 1888 (BFN 1888) was not physically inspected 'because it missed a random physical inspection', but there was no physical inspection made at all because, as submitted before us, section 13 does not require a physical inspection. Hence, clearly the Appellants failed in their duty of care in carrying out their functions under the Road Transport Act.

[19] The relevant parts of ss 10, 12 and 13 of the Act are as follows:

10(1) Every application for the registration of a motor vehicle shall be made in the prescribed form to the Director of a registration area and shall be signed by the person for the time being entitled to the possession of the motor vehicle.

(2) ...

(3) No motor vehicle shall be registered unless —

(a) such vehicle bears a clear, distinct and untampered engine and chassis number; and

(b) the prescribed fee has been paid:

Provided that paragraph (a) shall not apply to any electric motor vehicle which has no engine number.

(4) No motor vehicle shall be registered which does not comply with this Act as to construction, weight, equipment, use and age unless such motor vehicle has been exempted from such compliance under powers conferred by this Act.

(5) ...

(6) ...

12(1) The Director General or a Director may at any time before registration of a motor vehicle require the motor vehicle to be brought to any convenient place specified by him and to be inspected and, if necessary, to be weighed and measured and after registration may at any time require a motor vehicle to be brought as aforesaid if he has reason to believe:

(a) that the motor vehicle does not comply with the requirements of this Act;

(b) that any information furnished to him in respect of the motor vehicle is false, incorrect or misleading;

(c) that the motor vehicle is not in a serviceable condition; or

(d) that the weight, dimensions, character, construction, colour, identifying particulars or seating accommodation have been altered after the registration thereof.

(2) The registered owner of a motor vehicle shall forthwith inform the Director of a registration area in writing of any circumstance or event which affects the accuracy of any entry in the register relating to the motor vehicle, and shall at the same time forward or deliver to the Director the registration certificate relating to such motor vehicle.

(2A) The registered owner shall, in the case of a change of chassis of a motor vehicle, obtain the prior approval of the Director General before such change.

(3) The registered owner of a motor vehicle shall, whenever require by a Director so to do —

(a) forthwith furnish to the Director all such information as he may require for the purpose of verifying the entries relating to such motor vehicle in the register; and

(b) forthwith forward or deliver to the Director the registration certificate relating to such motor vehicle.

(4) After a motor vehicle has been inspected, weighed or measured under subsection (1), or upon receipt of any information or proof furnished in respect of a motor vehicle under subsection (2) or (3), the Director may make such amendments in the register and in the registration certificate relating to such motor vehicle as he may consider necessary, and shall return the registration certificate to the registered owner.

(5) Any person who without reasonable excuse fails to comply with any requirement of the Director General or a Director under subsection (1) or with subsection (2) or (3) shall be guilty of an offence.

Procedure on change of possession of motor vehicles

(13) (1) On any change of possession of a motor vehicle upon a voluntary transfer made by the registered owner —

(a) the registered owner shall, within seven days after such change of possession, forward to the Director of a registration area a statement in the prescribed form, and shall deliver to the new possessor or the new owner the registration certificate relating to the motor vehicle and, unless he is surrendering the licence under section 19, the licence;

(b) the new possessor or new owner shall, within seven days after such change of possession, forward to such Director a statement in the prescribed form together with the registration certificate and the prescribed fee; and

(c) the motor vehicle shall not be used for more than seven days after such change of possession unless the new possessor or the new owner is registered as the owner thereof and, if the licence has been surrendered by the registered owner, it shall not be used until the new owner or new possessor has taken out a new licence:

Provided that this subsection shall not apply in any case where the change of possession is consequent on a contract of hiring and the period of hiring does not exceed one month.

(2) ...

(3) Upon the registration of a new owner of a motor vehicle, the Director shall make the necessary alterations in the register and in the registration certificate relating to such motor vehicle, and shall deliver the altered registration certificate to the new owner:

Provided that the Director may, if he considers it expedient so to do, issue in lieu of the altered registration certificate a new registration certificate.

[20] In *Manoharan*'s case, the transaction in question also involved a secondhand car, just like in the instant case. In that case the relevant facts are that Manoharan had agreed to purchase a Honda Accord 2.0 Ex(i) bearing registration No NAJ 1912 from one Dewarajoo a/l Gurusamy. On 25 January 1994 Manoharan took the said car to a motor workshop to have it examined. There, both he and the mechanic had, apart from examining the said car, checked both the engine and chassis numbers and found that they tallied with the details in the registration card of the said car. Only then was the purchase price agreed at RM70,000. On 27 January 1994 Manoharan paid Dewarajoo RM10,000 and a receipt was accordingly issued. Manoharan was also given the registration card.

[21] From the details in the registration card, it was clear that Dewarajoo had bought the said car from F & C Motor Sdn Bhd in Kota Kinabalu, Sabah and the previous registration number of the said car was SS9554C. Earlier to that, the registered owner was Chin Hook Kee with a post box address in Sandakan, Sabah.

[22] The said car was detained by the police on 28 April 1994 on the ground that it was a stolen property. The Chemistry Department certified that the said car's engine number had been tampered with but the original number and the original owner could not be ascertained.

[23] Subsequently, Manoharan filed an originating summons in the High Court at Seremban for a declaration that he was the beneficial owner of the said car and that the registration effected by the Road Transport Department, Seremban, the second appellant was binding since they were negligent in not making a proper check of the chassis and engine numbers. He also claimed for damages.

[24] Manoharan's originating summons was dismissed by the High Court. However, on appeal, the Court of Appeal allowed Manoharan's appeal. Leave was granted by this court to Ketua Polis Negeri Sembilan & Anor to appeal against the decision of the Court of Appeal on three questions of law. One of the questions of law was as follows:

> (3) whether ss 8, 10, 11 and 12 of the RTA impose a duty on the second applicant as Registrar of Motor Vehicle to inspect every vehicle submitted for registration or *transfer of registration*. (Emphasis added.)

[25] In the appeal learned senior federal counsel submitted that s 12 of the Act imposes a discretion and not a duty on the Road Transport Department, Seremban, the second appellant to inspect vehicles and the inspection was to be done only in the circumstances set out in sub-s (1). In his judgment Abdul Malek Ahmad FCJ answered the question of law as follows:

A [44] The third question appears to be blatantly stating what is already clear and unambiguous when one reads the provisions of ss 8, 10, 11 and 12 of the RTA. It certainly has to be answered with a resounding 'yes'.

B **[26]** Abdul Hamid Mohamad JCA (as he then was), who was a member of the panel, wrote a supporting judgment for the case and made the following observations:

C [65] We see from the provision of s 10(3) that the registrar shall not register a vehicle unless such vehicle bears a clear distinct and untampered engine and chassis number. Section 12(1) empowers the registrar to require a motor vehicle to be brought to any convenient place to be inspected before the registration is effected. Of course, the law does not say that every vehicle must be inspected before registration. But, how is the registrar going to satisfy himself that the vehicle bears a clear, distinct and untampered engine and chassis number unless he inspects it? So, reading ss 10 and 12 together, it is clear to me that the sections impose a duty on the

D registrar to inspect every vehicle before registration or transfer of registration. So, my answer to the third question is in the affirmative.

E [66] But how the inspection is to be done is another matter. Is it sufficient that a normal physical examination be done or must the examination be done by a chemist? We see that in this case, the tempering was only discovered through the examination conducted by the chemist. The tampering was not discovered by all the earlier physical examinations by the second appellant and the respondent's own mechanic together with the respondent.

F [67] I am of the view that it is unreasonable and not practical to require every inspection of the engine and chassis numbers of every vehicle to be done by the chemist, for the purpose of registration. It involves sending every vehicle to the Chemistry Department for such examination. That clearly would delay the process of registration of motor vehicles, considering the number of vehicles being registered every day. Indeed, the public would be the first to complain about the delay. So, in my view it is unreasonable to require an examination of every vehicle to

G be conducted by the chemist to ascertain the engine and chassis number before registration. Normal physical examination by officers of the second appellant would suffice. After all, s 12(1) only empowers the second appellant to inspect the vehicle. The sub-section clearly means inspection by the second appellant. The court should not read more into the provision of the law.

H [68] So, on the third question, I would answer it in the affirmative, even though I would not go so far as to require the second appellant to have the vehicle sent to and be examined by the chemist.

I **[27]** It is therefore clear from the decision of this court in *Manoharan*'s case that ss 10 and 12 of the Act impose a duty on the Director for Road Transport ('director') to inspect every vehicle before registration or transfer of registration. In other words, the two sections are applicable to the registration of a motor vehicle under s 10 and the registration of a new owner under s 13, on a voluntary transfer made by the previous owner.

[28] In the instant case, the Court of Appeal held that ss 10 and 12 of the Act were only applicable to the registration of a motor vehicle and not to the change of possession (the registration of a new owner of motor vehicle like the instant case). We have carefully considered ss 10, 12 and 13 of the Act and the decision of this court in *Manoharan*'s case and, with respect, we agree with the decision of the Court of Appeal. The wordings of ss 10 and 12 are very clear and unambiguous that they only deal with the registration of motor vehicles. They do not deal with the change of possession of motor vehicles. We agree with the Court of Appeal that only s 13 apply to change of possession of a motor vehicle as what happened in the instant case.

[29] Under s 13(1) of the Act the existing registered owner, on any change of possession of a motor, is required to forward to the director a statement in the prescribed form within seven days after such change of possession. The new owner is also required to forward to the director a statement in the prescribed form together with the registration certification and the prescribed fee within seven days. After they complied with the requirements the new owner is entitled to be registered as the new owner of the motor vehicle. Unlike s 12 of the Act there is no requirement under s 13 for the director to inspect the motor vehicle before the registration of a new owner of the motor vehicle.

[30] As such we are of the view that the first appellant did not breach his duty under s 13 when he registered the respondent as the new registered owner of the motorcar without first inspecting the motorcar. For the reasons given our answer to the first question posed is in the negative.

[31] However, that is not the only ground the respondent based his action against the appellants. As stated earlier he also claimed that the first appellant was negligent in, inter alia, failing to keep and maintain an accurate and reliable registration system of motor vehicles and in failing to update its registration and information system with the latest information.

[32] The learned trial judge held that the first appellant had a duty to ensure that the particulars in the registration certificate were accurate, reliable, well kept, valid and protected.

[33] It must be noted, that would impose a heavy and burdensome duty to the first appellant as it is practically impossible to ascertain the correctness or accuracy of every information of each vehicle submitted for registration. Section 8 of the Act only provides that every director shall keep and maintain a register of all motor vehicles registered under the Act in the registration area for which he is a director and such register shall be in such form and contain such information, details and particulars as the Director General may from time to time direct.

[34] It must be remembered that the evidence was adduced to show that the first appellant was informed by Tenaga Insurance Bhd (the fourth defendant) that in December 1996 the motorcar was stolen. Unfortunately, the first appellant did not record that information in the register kept by the department. The explanation given was that it was not the practice of the department to record that information in its register. The motorcar was registered in the respondent's name on 1 April 1999, which was 3 1/2 years after the first appellant was informed that the motorcar was stolen.

[35] The respondent made a search with the register kept by the first appellant and it was not shown from the register that the motorcar was a stolen motorcar. Acting on the information available and after satisfying himself that there was no problem with the motorcar the respondent decided to buy the motorcar.

[36] We are of the view that the registers maintained by the department pursuant to s 8 of the Act must contain accurate particulars of all vehicles registered by the department. This is because the prospective purchasers of the vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions. If the registers are not reliable they will affect those in the motor trade industry and the public who purchase secondhand vehicles. In this connection we agree with the observation made by Siti Norma Yaacob JCA (as she then was) in *Pendaftar Dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v KS South Motor Sdn Bhd* [2000] 2 MLJ 540 at p 548; [2000] 2 CLJ 573 at p 585:

> ... it is our opinion that the law should be that registers maintained by them must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee and 'clearly a duty to take care must exist in such a case'. See the case of *Ministry of Housing and Local Government v Sharp and Another*
>
> We also consider that every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public particularly owners of motor vehicles, would-be-purchasers of such vehicles and those involved in the motor trade like the respondent, rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the first and second appellants to take care that all information coming from them are accurate. See the Privy Council case of *Invercargill City Council v Hamlin* [1996] 2 WLR 367, and the *Australian case of Parramatta City Council v Lutz* [1988] 12 NSWLR 293. As was said by the High Court of Australia in the case of *The Council of the Shire of Sutherland v Heyman and Another* [1984-1985] CLR 424, reliance 'has always been a important element in establishing the existence of a duty of care. It has been suggested that liability in negligence is largely, if not exclusively, based on the plaintiffs reliance on the

defendant's taking care in circumstances where the defendant is aware or ought to be aware of that reliance.'

[37] As regards the second question posed in the appeal it is to be noted that the High Court ordered the appellants to pay special damages of RM142,858.40 and interest of 8%pa from the date of judgment to the date of realisation of the judgment sum and further ordered that general damages to be assessed by the senior assistant registrar. The award was affirmed by the Court of Appeal.

[38] The senior federal counsel however chose not to make any submission on the second question of law posed in the appeal. As such we find it unnecessary to answer the question posed.

[39] As regards the third question we are of the view that there are decisions from this court which had dealt with that issue. For example in *Pacific Forest Industries Sdn Bhd & Anor v Lin Wen Chih & Anor* [2009] 6 MLJ 293, the first question of law posed in that case is as follows:

whether it is open to an appellate court to find or hold that a contract has been frustrated notwithstanding that such had neither been pleaded nor canvassed in the trial court and neither pleaded as a ground of appeal in the appellate court?

[40] At p 303 of the report, this court observed:

(17) The effect of a judge making a decision on an issue not based on the pleadings and without hearing the parties on that particular issue would be in breach of the Latin maxim audi alteram partem, which literally means to hear the other side, a basic principle of natural justice.

[18] In the instant appeal, the case was pleaded on a breach of contract and the first defendant's defence was that the plaintiffs had only ordered one shipment, three shipments short of the terms of the agreement, although the first defendant was ready and willing to supply the timber products. The reply contended otherwise. There was nothing mentioned in the pleadings which could be related to frustration.

[19] It is trite that in pleading frustration, particulars which give rise to frustration must be provided specifically in the pleadings (see *Bullen & Leake & Jacob's Precedents of Pleadings* (13th Ed, 1990) London, Sweet & Maxwell at p 1102). The parties in this case had not pleaded or submitted that the contract in question had been frustrated. Thus, the defendants were highly prejudiced when the Court of Appeal decided on the issue of frustration.

[20] Therefore, the answer to the first question must be in the negative.

[41] In *Datuk M Kayveas v See Hong Chen & Sons Sdn Bhd & Ors* [2014] 4 MLJ 64; [2013] 5 CLJ 949, one of the issues posed in the appeal is as follows:

whether the Court of Appeal has the jurisdiction and/or power under ss 67 and 68 of the Courts of Judicature Act 1964 to interfere with a part of the judgment of the learned judge not forming the subject of an appeal in determining the appeal before it.

[42] This court, at p 84 (MLJ); at p 975 (CLJ), answered the question as follows:

> Question 1 specifically mentioned ss 67 and 68 of the Courts of Judicature Act 1964, provisions which give the Court of Appeal jurisdiction to hear and determine civil appeals. These provisions not only are substantive in one context but also procedural on the other, depending upon the context they are being used. Be that as it may when interpreting them the outcome should not result in unfairness or produce manifest injustice in particular relating to procedure (*Sim Seoh Beng v Koperasi Tunas Muda Sungai Ara Bhd* [1995] 1 MLJ 292; [1995] 1 CLJ 491). In the instant case no jurisdictional error was committed by the learned judge, which could justify the Court of Appeal to interfere or act to straighten things out. Further, in the course of the unnecessary interference of a part of the judgment that did not form part of the appeal, and due to a misreading of the grounds of judgment, the Court of Appeal had instead caused injustice to the appellant. In the circumstances of the case, the answer to the first question is in the negative. This ground by itself is sufficient for us to allow the appeal. Thus, there is no necessity to answer Questions 2 and 3.

[43] Based on the authorities cited above our answer to the third question posed is therefore in the negative.

[44] With such an answer given to the third question posed we find it unnecessary to answer the fourth question.

[45] Even though we answered the first and third question in favour of the appellants, we find that the decision of the courts below to allow the respondent's claim is justified based on the case pleaded and the evidence adduced by the respondent. The appeal is therefore dismissed with costs.

Appeal dismissed with costs.

Reported by Afiq Mohamad Noor